IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 34773 of 2004(M)

PETITIONER:

MOHANACHANDRAN PILLAI G.,
S/O.GANGADHARAN PILLAI, "MOHANAM",
PULIYOOR VANCHI NORTH, THAZHAVA P.O.,
THODIYOOR VILLAGE, KARUNAGAPPALLY TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.T.GOPALAKRISHNAN
SRI.K.V.SADANANDA PRABHU

RESPONDENTS:
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1. STATE OF KERALA, REP. BY THE
PRINCIPAL SECRETARY INDUSTRIES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE GENERAL MANAGER,
KERALA MINERALS & METALS LTD.,
SANKARAMANGALAM P.O., CHAVARA, KOLLAM DIST.

3. THE SECRETARY,
KERALA PUBLIC SERVICE COMMISSION,
PATTOM P.O., THIRUVANANTHAPURAM.

BY ADVS. SRI.P.C.SASIDHARAN, SC, KPSC
SRI.U.K.RAMAKRISHNAN --- R2
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SMT.UMA GOPINATH
SRI.V.KRISHNA MENON
SRI.SANDEEP.E.
SMT.AMRITA JAYARAM
GOVERNMENT PLEADER SRI. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 34773/2004 M

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE INTERVIEW CARD SENT TO THE PETITIONER BY THE R3 DT. 15/6/2001.

EXT.P2. COPY OF THE REPRESENTATION MADE TO THE CHIEF MINISTER OF KERALA DT. 16/09/2004.

EXT.P3. COPY OF THE LIST OF RETIRED SECURITY GUARDS SENT TO THE CHIEF MINISTER DT. 16/09/2004.

EXT.P4. COPY OF THE ACKNOWLEDGEMENT SENT BY THE CHIEF MINISTERS OFFICE DT. 29/09/2004.

EXT.P5. COPY OF THE CHART.

EXT.P6. COPY OF THE LIST OF SECURITY GUARDS IN THE PIGMENT UNIT.

True copy

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K. BALAKRISHNAN NAIR, J.

W.P.(C) No.34773 of 2004 (M)

Dated this the 13th June, 2007.

JUDGMENT

The petitioner is a candidate included in the rank list published by the Public Service Commission, for appointment as Security Guards under the 2nd respondent. Alleging that the available vacancies are not reported to the Public Service Commission, this writ petition was filed. This Court, as per interim order dated 1.12.2004, directed the 2nd respondent to report 42 vacancies of Security Guards to the 3rd respondent Public Service Commission and it was also ordered that advice need not be made from the list of candidates forwarded to the Public Service Commission by the 2nd respondent, pursuant to the interim order.

2. The learned counsel for the 2nd respondent , submitted that pursuant to the said interim order, no vacancies were reported, instead, the said respondent filed counter affidavit and moved for vacating the interim order.

3. Going by the Full Bench decision of this Court, the Public Service Commission can advise candidates only to vacancies which were reported to it before the expiry of the rank list. If that technical view is taken, this writ petition is infructuous. But, in appropriate cases, this Court has held that if there is willful omission to report vacancies, this Court can ask the appointing authority to make the appointment, without the intervention of the Public Service Commission. In view of the above position, the writ petition has to be heard on merits. The point that now arises for consideration is whether there was any vacancy available, on the date of expiry of the list, to be filled up by the Public Service Commission hands, under the 2nd respondent's Company. According to the 2nd respondent, 30 vacancies were reported to the Public Service Commission and were filled up by appointing candidates advised by the Commission. At present there are 27 Security Guards and four more Scheduled Caste/Scheduled Tribe candidates are expected to join the service shortly. Construction of the compound wall of the company is nearing completion and, therefore, even those 27 Security Guards are likely to be rendered surplus, as Security Guards may be necessary only to guard the gate. So, it is submitted that no vacancies

are available to be filled up and, therefore, there cannot be any further appointment. The petitioner has filed a reply affidavit, in which it is submitted that 42 vacancies were reported to the Public Service Commission and more than 80 persons are engaged on temporary basis, as security Guards. So, the contention of the 2nd respondent that no vacancies are available is untenable.

4. The 2nd respondent has filed an additional counter affidavit, in which it is stated that the temporary hands are engaged as Security Guards having regard to the temporary need arising, for guarding the land acquired by the company for mining purposes and for setting up new projects, and there cannot be any regular appointment to those vacancies through the Public Service Commission. The petitioner has filed an additional reply affidavit, reiterating his contentions.

5. The 2nd respondent company is an industrial establishment. It is for its management to decide how many employees should be engaged for doing different works. It is essentially a managerial function. In a particular wing of the company, the optimum strength of employees may be 100. But, as part of economy measure, or for other valid reasons, if it decides to run the unit with only 50 workmen, the Court cannot interfere with

such decision. Normally, recruitment of Guards is made through the Public Service Commission, to the vacancies in the sanctioned posts. This Court cannot compel the management to fill up all possible vacancies in the company, even assuming that additional vacancies are available. Basically, as stated earlier, it is a managerial function to decide how many persons should be recruited to various categories of posts. If the management does not require any more employees, this Court cannot issue any mandamus to fill up any further vacancies. The petitioner, who is included in the rank list, does not have any legal right in this regard. If the posts are filled up, then, of course, the petitioner has a right to be considered for appointment.

But, on the facts of this case, no relief can be granted to the petitioner. This writ petition is, accordingly, dismissed.

K. BALAKRISHNAN NAIR,
JUDGE.

vav.